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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,536	04/02/2001	Thomas M. Sirhall	SMQ-055	9786

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LAHIVE & COCKFIELD, LLP.
28 STATE STREET
BOSTON, MA 02109

EXAMINER

BAYERL, RAYMOND J

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 01/02/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,536

Applicant(s)

SIRHALL, THOMAS M.

Examiner

Raymond J. Bayerl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 - 20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The language should avoid using phrases which can be implied, such as, "is provided" (line 1).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 2, 4, 7 – 9, 11 – 13, 15 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziv-el et al. ("Ziv-el"; US #2001/0034016 A1) in view of Tsumori et al. ("Tsumori"; US #6,435,880 B1).

As per independent claim 1's "method for testing a user online" (see also independent claim 8), please note the close correspondence to Ziv-el's METHOD AND SYSTEM FOR ONLINE TEACHING USING WEB PAGES, which provides URL's of Web pages and questions related thereto (Abstract; paragraphs 0082 – 0084). A "Question" applet is employed in correspondence to the lesson data, as in "receiving a request for a software tool". The Ziv-el applet "displays a question" and receives an "answer".

Ziv-el is principally concerned with the distance learning particulars relating to questions and answers *per se*, and does not enter into **explicit** detail about "displaying a list of possible answers to the question with associated icons" that the "user" may "select". However, such direct-manipulation interfaces were well-known in the art, as

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seen in Tsumori's LEARNING-SUPPORT DEVICE, where a question-screen display part displays a question-screen composed of a question and moving images as choices for an answer (Abstract). Note in particular that Tsumori's interface at fig 11 uses "icon" selection to answer a question.

Thus, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to use a downloaded applet tool as per Ziv-el, as enhanced by the graphical screen of Tsumori, in performing the test-administering function as presently claimed, for this would aid the student in accessing and providing the answers, as is a general goal of client GUI's when implemented by applets such as Ziv-el's.

As per claim 2's "feedback" (see also claim 9), please note Ziv-el's response via mistake indicating comments (Abstract). As noted above, and with respect to claim 4, the "software tool" of Ziv-el is specifically an applet. The Java environment of Ziv-el (paragraph 0045) is clearly a teaching of "a virtual machine" (claim 7).

The Tsumori icon-selection display reasonably suggests the "check-icon list" of independent claim 11, and this combines, as noted above, with Ziv-el's "online educational course" that will "run an applet". Tsumori's icons further suggest the "check-icon list" presented in independent claim 16.

Claim 12's "HTML", as noted at Ziv-el's paragraph 0082 (see also claim 18), is used in HTML pages containing Java applets. The "Question" applet communicates with the response server (paragraph 0084), as part of a presentation in which "the

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HTML code includes the question" (claims 13, 19). Thus Ziv-el also creates a "Java virtual machine" (claim 17).

It was eminently well-known in the art to invoke client systems on Student Computer(s) such as in Ziv-el's fig 10 via claim 15's "compact disc".

4. Claims 3, 5 – 6, 10, 14, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziv-el in view of Tsumori and Futakuchi ("Futakuchi"; US #2001/0051330 A1).

As per the details as to the questioning procedure provided in these claims, the Ziv-el/Tsumori combination does not **explicitly** teach such embellishments as disabling "after a predetermined maximum number of attempts" (claims 3, 10) or accessing an "input file for indicating a list of possible answers, and the correct answers" (claim 5). However, Futakuchi's APPARATUS AND METHOD FOR PROVIDING REMOTE TEACHING specifically uses a question database and an answer database, in a feedback arrangement in which tip level is incremented as per fig 4.

Thus, it would have been further obvious to the person having ordinary skill in the art to use the database and tip sequence of Futakuchi in the enhancement of Ziv-el's applet-based question page and Tsumori's iconic selection interface, for this will handle the situations of sourcing the data securely for the student interface and handling the eventuality of wrong answers, within limits. The tip level of Futakuchi must be finite, and will eventually fail to return responses; this sets the "maximum number of attempts".

The object-oriented Java structure of Ziv-el will place the applet separately in the downloaded tools from "a reference file distinct from the input file" as per Futakuchi

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(claim 6). Because of the applet-based question-tool found in Ziv-el, the developer encapsulates the content of "possible answers" in a way that is "separate from the HTML code to prevent the user from obtaining the correct answer by looking at the HTML code" (claims 14, 20).


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The remaining US Patent documents made of record (see attached form PTO-892) relate to learning systems such as those that present questions with answers.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (703) 305-9789. The examiner can normally be reached on M - F from 10:00 AM to 5:00 PM.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (703) 308-3116. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (703) 872-9306.

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173

29 December 2003